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*Attorneys for Plaintiffs Individually and on Behalf of  
All Others Similarly Situated*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

REMY TURNER, CHRISTOPHER  
MARTIN, and JOEY BARUCH,  
Individually and on Behalf of All Others  
Similarly Situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

**Case No.**

**CLASS ACTION COMPLAINT  
FOR:**

- 1. Breach of Express Warranty;**
- 2. Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq.;**
- 3. Violation of the Song-Beverly Consumer Warranty Act;**
- 4. Violation of Cal. Bus. & Prof Code § 17200 et seq.; and**
- 5. Violation of Cal. Civil Code § 1750 et seq.**

**DEMAND FOR JURY TRIAL**



warranty. Most commonly, problems arise with the keyboards' spacebar keys, which cannot be removed, even by Apple's "Geniuses" at its stores. without risking damage to the keyboards.

5. The Laptops' defect is substantially certain to manifest. Thousands of consumers have reported sticking or non-responsive keys on their Laptops. Complaints about the butterfly keyboard are prevalent, and include blog posts, tweets, support-forum comments, a Change.org petition<sup>1</sup>, and even a satirical song and video.<sup>2</sup>

6. Despite its awareness of the defect, Defendant has advertised and continues to advertise the Laptops as having a superior and highly responsive keyboard, with "four times more key stability than a traditional scissor mechanism." These representations were false and misleading.

7. Defendant has at all times failed to disclose that the keyboard is defective, because it is prone to malfunction necessitating costly repair and replacement.

8. Further, although the Laptops come with a one-year written warranty from Defendant, Defendant refuses to honor its warranty obligations, attributing the keyboard defect

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<sup>1</sup> <https://www.change.org/p/apple-apple-recall-macbook-pro-wdefective-keyboard-replace-with-different-working-keyboard> (last visited May 10, 2018).

<sup>2</sup> [https://www.youtube.com/watch?time\\_continue=83&v=FdS3tjEIqUA](https://www.youtube.com/watch?time_continue=83&v=FdS3tjEIqUA). The lyrics are as follows:

I'm pressing the space bar  
I'm pressing the space bar  
I'm pressing the space bar  
I'm pressing the space bar  
And nothing is happening

This computer is about a year old  
And it was very expensive  
I had been waiting to upgrade  
For a long time

And now you're telling me  
It would need extensive  
Surgery for a speck of dust  
Lodged beneath the butterfly

I found your instructions  
They were not helpful

I bought this can of air  
I feel like an idiot





1           23.     Following his purchase, Mr. Turner set up his Laptop for use pursuant to the  
2 instructions provided.

3           24.     Shortly after his purchase, Mr. Turner noticed that the right side of the space bar  
4 on the keyboard would get stuck in the down position. Mr. Turner used cans of compressed air  
5 designed for keyboard cleaning whenever this occurred, and sprayed on the affected area to try  
6 to solve the problem.

7           25.     Due to the recurring nature of the problem, Mr. Turner also called the Best Buy  
8 store, which advised him to bring the Laptop in, as the keys were not designed to be removed,  
9 as on older Laptops.

10          26.     When the problem continued, Mr. Turner returned the Laptop to the Best Buy  
11 store in Lubbock, Texas. Mr. Turner received a replacement unit, but experienced the same  
12 sticking space bar problem. Shortly thereafter, Mr. Turner returned the replacement Laptop to  
13 Best Buy, and received a second replacement unit.

14          27.     Mr. Turner continues to experience repeated failures with the functionality of the  
15 keyboard on his MacBook Pro. Each of the three units Mr. Turner has owned has had the same  
16 keyboard problem with the sticking space bar.

17          28.     On December 16, 2016, plaintiff Christopher Martin purchased a MacBook Pro  
18 15 inch Laptop online from the Apple Store website, custom ordered with a second internal GPU  
19 AMD Radeon PRO 460, and paid \$2,877.23.

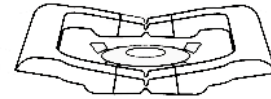
20          29.     Prior to making his purchase, Mr. Martin viewed advertising for the butterfly  
21 design keyboard feature as displayed on the Apple website, in a manner as shown on the screen  
22 capture below. Mr. Martin understood this feature to not only “increase comfort” when typing,  
23 but also to allow Apple to optimize the physical space available in the new, thinner design.

## Enhanced butterfly mechanism. Key to the keyboard.

Now, with our second-generation butterfly mechanism, the keyboard experience is refined for greater comfort and responsiveness. So when your finger strikes a key, it goes down and bounces back with a crisp motion that you'll appreciate the moment you start typing.



Traditional scissor  
mechanism



Apple-designed second-  
generation butterfly  
mechanism

30. Following his purchase, Mr. Martin set up his Laptop for use pursuant to the instructions provided.

31. Mr. Martin noticed around August of 2017 that the spacebar would get stuck in the pressed position, but with a hard press, would unstick. This would happen roughly once every 1 to 2 weeks, and Mr. Martin continued to address the problem with a hard press on the key.

32. Over time, however, the failures happened more frequently, which led Mr. Martin to use a can of compressed air to spray in between the keys, in an attempt to remedy the situation. Again, it seemed to temporarily fix the problem.

33. Eventually, starting around January of 2018, the spacebar would get stuck and nothing Mr. Martin would do would fix the problem. This continues to occur about once every few days, and it will stay stuck for about a week.

34. Mr. Martin's computer is now beyond its warranty period. Mr. Martin has read that Apple charges several hundred dollars to fix this issue. The only thing that appears to temporarily fix the issue is shaking the Laptop until the key gets unstuck.

35. Mr. Martin continues to experience repeated failures with the functionality of the keyboard on his MacBook Pro.

36. On July 21, 2017, plaintiff Joey Baruch purchased a MacBook Pro 13 inch from an Apple Store in Sherman Oaks, California, and paid \$1,974.91.





1           45.     Apple began selling the MacBook on April 10, 2015. The price for the Laptop  
2 started at \$1,299 for the base configuration with 256 GB of flash storage. An upgraded model  
3 cost \$1,599 and contained 512 GB of storage and a faster processor.

4           46.     On its website dedicated to the MacBook, Apple describes the keyboard as “A  
5 keyboard refined for an even better hands-on experience,” and states:

6           We believe that a comfortable, full-size keyboard is an essential part of any notebook.  
7 To fit one into MacBook, we designed a keyboard from the ground up — including each  
8 key and its underlying mechanism. This makes the whole keyboard not only much  
9 thinner, but also more comfortable and precise, so your fingers feel right at home.

10           **Enhanced butterfly mechanism.**  
11           **Key to the keyboard.**

12           Now, with our second-generation butterfly mechanism, the keyboard experience is  
13 refined for greater comfort and responsiveness. So when your finger strikes a key, it  
14 goes down and bounces back with a crisp motion that you’ll appreciate the moment you  
15 start typing.

16           <https://www.apple.com/macbook/>, last visited May 15, 2018.

17           47.     On October 27, 2016, Apple held a launch event for the MacBook Pro at its  
18 Cupertino headquarters.

19           48.     During the event, Schiller highlighted the MacBook Pro’s butterfly keyboard,  
20 hailing it as revamped and upgraded, and stating that “the keyboard . . . [is] more responsive, it  
21 gives an even greater sense of keyboard travel as you press on it. It is a great keyboard. I could  
22 talk all day about it.” Their primary benefit, according to Schiller, was that they helped make  
23 the new Laptops 3.1 millimeters thinner.

24           49.     On its website dedicated to the MacBook Pro, Apple describes the keyboard as  
25 follows:

26           Keyboard and Trackpad

27           More responsive keyboard. More expansive trackpad.

28           Interacting with MacBook Pro is a smooth experience all around. The keyboard features  
our second-generation butterfly mechanism — providing four times more key stability  
than a traditional scissor mechanism, along with greater comfort and responsiveness.  
And the spacious Force Touch trackpad gives your fingers plenty of room to gesture and  
click.

1 [https://www.apple.com/macbook-pro/?afid=p238%7Cs0vC2LySe-  
3 dc\\_mtid\\_1870765e38482\\_pcrd\\_198777681791\\_&cid=aos-us-kwgo-mac--slid--product-](https://www.apple.com/macbook-pro/?afid=p238%7Cs0vC2LySe-<br/>2 dc_mtid_1870765e38482_pcrd_198777681791_&cid=aos-us-kwgo-mac--slid--product-), last  
4 visited May 15, 2018.

5 50. The price for the MacBook Pro varied depending upon the model. A 13-inch  
6 MacBook Pro without a Touch Bar (2.0 GHz dual-core Intel Core i5 processor with Turbo Boost,  
7 8GB memory, 256 GB flash storage) was offered for \$1,499. An upgraded model of the 13-inch  
8 MacBook Pro with a Touch Bar was offered for \$1,799. The 15-inch MacBook Pro equipped  
9 with the Touch Bar (2.6 GHz quad-core Intel Core i7 process with Turbo Boost, 16GB memory,  
10 256GB flash storage) was offered for \$2,399. Each of these models came with the butterfly  
11 switch keyboards. The MacBook Pro went on sale on October 27, 2016, with Touch Bar models  
12 shipping in the weeks that followed.

### 13 **THE KEYBOARD DEFECT MANIFESTS SOON AFTER LAUNCH**

14 51. Although the Laptops appear to function normally when new, the Laptops'  
15 keyboards suffer from a host of problems, including sticking keys, keystrokes failing to register,  
16 keys typing letters or commands multiple times when struck only once, or keys simply not  
17 working at all.

18 52. These problems arise from a design defect that permits a minute amount of dust  
19 to settle under the keys and render them inoperable. That the keys cannot be readily removed  
20 for cleaning exacerbates the problem: when one of the keys is affected, the entire keyboard must  
21 be replaced.

22 53. This defect renders the keyboards different from, and inferior to, Apple's  
23 intended manufacturing result.

24 54. When consumers experience these keyboard problems, the Laptops can no longer  
25 reliably input keystroke commands, rendering the Laptop unusable for its ordinary and intended  
26 purpose.

27 55. All of the Laptops are subject to the same defect. Although the defect may take  
28 longer to manifest for some users than for others, all Laptops are reasonably likely to manifest  
the keyboard defect during their useful lives.

**APPLE HAS BEEN AWARE OF THE DEFECT SINCE THE BUTTERFLY  
KEYBOARD WAS LAUNCHED**

56. Apple knew or should have known of the butterfly keyboard defects before the Laptops were ever sold to the public, as a result of standard pre-release product testing.

57. Further, as described herein, Apple knew or should have known that that the Laptops were defective shortly after the 12 inch MacBooks were initially launched in 2015, and shortly after the MacBook Pros were launched in 2016, because, shortly after each launch, the keyboard was the subject of numerous consumer complaints published on the Company's website and a variety of internet message boards, such as MacRumors, social and traditional media, and retailer websites, and Apple continuously monitors its own website as well as other web pages, including MacRumors, and social and traditional media outlets.

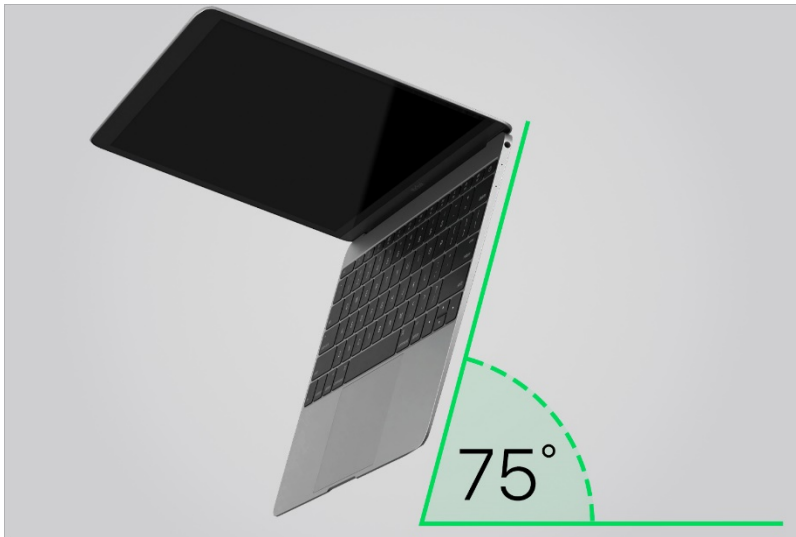
58. Evidencing its awareness of the widespread problem, on June 7, 2017, Apple published a "solution" to the problem on its website, <https://support.apple.com/en-us/HT205662>, last visited on May 15, 2018. The webpage provides as follows:

**HOW TO CLEAN THE KEYBOARD OF YOUR MACBOOK OR MACBOOK PRO**

If your MacBook (2015 and later) or MacBook Pro (2016 and later) has an unresponsive key, or a key that feels different than the other keys when you press it, follow these steps to clean the keyboard with compressed air.

As you follow these steps, remember to use the straw included with the compressed air to control airflow, and keep the end of the straw about a half-inch away from the keyboard as you spray. Also remember to not invert the air can while you're spraying.

Hold your Mac notebook at a 75-degree angle, so it's not quite vertical.



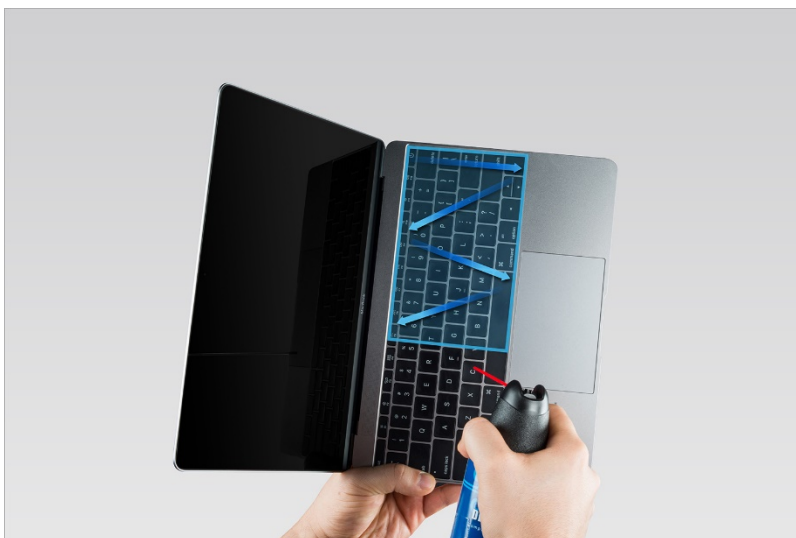
Use compressed air to spray the keyboard, or just the affected keys, in a left-to-right motion.



Rotate your Mac notebook to its right side and spray the keyboard again, from left to right.



Repeat the action, this time with your Mac notebook rotated to its left side.



#### **Learn more**

If any keys are still unresponsive after you've followed these steps, [visit an Apple Retail Store or Apple Authorized Service Provider](#) for service.

Learn more about [cleaning your other Apple products](#).

59. On October 22, 2017, following Apple's publication of the above "solution," *Business Insider* published an article entitled, "Apple's official fix is for its new MacBook keyboard is absurd." The article described problems that its author had experienced with Apple's butterfly keyboard, along with Apple's recommended fix – "to basically turn the entire keyboard

1 nearly vertical and blast it with air until the particle eventually falls out.” As the author  
 2 explained, “Apple recommends you take your laptop — some models cost thousands of dollars,  
 3 mind you — turn it nearly vertical, and then make three passes with a can of compressed air.”  
 4 Unsurprisingly, this “solution” failed to solve the problem with the author’s Laptop.

5         60. Also in October 2017, an article was published in the online publication, The  
 6 Outline, entitled, “THE NEW MACBOOK KEYBOARD IS RUINING MY LIFE: A. It’s so  
 7 bad.” In the article, Johnson described his experience returning to the Apple store the third time  
 8 the butterfly keyboard on his MacBook Pro malfunctioned. As they had each of the previous  
 9 times Johnson had shown Apple’s “Genius Bar” representatives the malfunctioning space bar on  
 10 his keyboard, the representative suggested the problem was the result of a speck of dust that had  
 11 worked its way under the spacebar key. Johnson responded: “ ‘If a single piece of dust lays the  
 12 whole computer out, don't you think that's kind of a problem?’ ”

13         61. The article continued:

14         The primary motivator behind the rise of the butterfly switch seems to be that Apple  
 15 keeps trying to make all its products thinner, to a degree beyond reason at this point  
 16 (MacBook Pros now weigh as little as three pounds). But it also stands to reason Apple's  
 17 logic went something like this: scissor switch = lower profile = less dirt under the keys;  
 therefore butterfly switch = even lower profile = even less dirt under the keys, and a  
 better keyboard for everyone, theoretically, except for people who like the feeling of a  
 key moving under their fingers or, as it’s also called, typing.

18         ...

19         Perhaps it’s true that less dirt gets under butterfly switched-keys. But therein lies the  
 20 problem — when dirt does get in, it cannot get out. A piece of dust is capable of  
 21 rendering a butterfly switch nonfunctional. The key won’t click, and it won’t register  
 whatever command it’s supposed to be typing. It’s effectively dead until someone can  
 22 either shake loose the debris trapped under it or blow at the upside-down keyboard  
 Nintendo-cartridge style. Meanwhile, Apple quietly put up a page with instructions  
 expressly to try and help people with dead butterfly switch keys.

23  
 24         The problem with dead keys is that, unless you can stop what you're doing mid-paper or  
 25 report or email or game and have a physical tiff with your computer, the temptation to  
 26 just slam a little harder on those delicate keys to get the N or B or period you need until  
 27 you reach a stopping place is high. But there is no logical at-home remedy for the  
 28 consumer; when one key on a butterfly switched-keyboard becomes nonfunctional,  
 unless you can dislodge whatever dust or crumb is messing it up without being able to  
 physically access it, the keyboard is effectively broken. If you remove the key to try and  
 clean under it, you stand a high chance of breaking it permanently, but if you leave it

there and continue to have to pound the key to type one measly letter, you also might break it permanently. ....

... Apple forums are overflowing with reports of Geniuses who have told customers that Apple is “collecting data” on the issue. One corporate issuer of the MacBook Pros in question reported to me that its business has encountered a significant number of keyboard issues, but “less than 5% for sure.” Another Genius explained to me that he had seen an overwhelming number of the computers with keyboard issues, the spacebar in particular — while some keys can be very delicately removed, the spacebar breaks every single time anyone, including a professional, tries to remove it. This is a big problem, since, according to the Genius I spoke to, it’s the key most susceptible to acting up from the aforementioned piece of dust. “I would say it’s THE issue on this computer,” he told me.

...

If a computer with actually broken, dead, or malfunctioning keys is brought into the Apple Store, Geniuses run no fewer than three diagnostic tests that each take about 15 minutes. One involves the Genius pressing every single key on the keyboard to see if the switch is responsive, a test I am told was added in response to the sheer number of keyboards coming back broken. The process takes an hour.

If Apple decides to replace the keyboard, it sends out the computer to replace the entire top case; there is no such thing as replacing an individual key or just the keyboard. On a Macbook Pro, the top case retails for \$700, but the computers haven’t been around long enough for anyone to be out of warranty yet. In regular MacBooks, which were first available in the spring of 2015, Apple has quoted as much \$330 to replace a top case out of warranty. The path from “a piece of dust” to “\$700 repair” is terrifyingly short.

62. On March 9, 2018, *Business Insider* published a follow-up article regarding the Laptops’ keyboard, stating that the problem with the keyboard “dust or other small particles can get stuck under the spacebar or other keys and make it unresponsive” ... “is widespread.” According to *Business Insider*,

Since Business Insider covered the issue in October, we’ve received scores of reader emails with the same problem. Fixing it can cost hundreds of dollars at an Apple store.

A sampling from readers in the past months:

"The spacebar is almost nonfunctional. I have to press it repeatedly to get it to register a space."

"I'm one of the Apple customer that has this problem two months after buying an expensive MacBook Pro 13' 2017."

"I called the place where I bought the MacBook and they said it can be sent to Apple but it might cost a couple hundred dollars to fix. I have only had this since August this year."

<http://www.businessinsider.com/macbook-keyboard-issue-fix-detailed-by-apple-in-new-patent-2018-3>.



**APPLE'S HAS NOT ADEQUATELY ADDRESSED THE DEFECTIVE LAPTOPS  
THROUGH ITS WARRANTY COVERAGE**

63. Apple provided (and provides) a written one-year limited warranty with each Laptop.

64. Apple's warranty states, in pertinent part:

**WHAT IS COVERED BY THIS WARRANTY?**

Apple Inc. of One Infinite Loop, Cupertino, California 95014, U.S.A. ("Apple") warrants the Apple-branded hardware product and Apple-branded accessories contained in the original packaging ("Apple Product") against defects in materials and workmanship when used normally in accordance with Apple's published guidelines for a period of ONE (1) YEAR from the date of original retail purchase by the end-user purchaser ("Warranty Period").

\*\*\*

**WHAT WILL APPLE DO IN THE EVENT THE WARRANTY IS BREACHED?**

If during the Warranty Period you submit a claim to Apple or an AASP in accordance with this warranty, Apple will, at its option: (i) repair the Apple Product using new or previously used parts that are equivalent to new in performance and reliability, (ii) replace the Apple Product with the same model (or with your consent a product that has similar functionality) formed from new and/or previously used parts that are equivalent to new in performance and reliability, or (iii) exchange the Apple Product for a refund of your purchase price.

65. Despite its Limited Warranty, Apple has failed to provide an effective remedy for the Laptops' defect, instead instructing consumers to attempt futile repairs, as discussed above. Apple representatives frequently attempt to pass blame for the defective keyboards to consumers, telling the consumers that their problems are due to dust and debris getting under the keyboard, and that consumers—not Apple—should try to fix this problem.

66. Further, even when Apple has agreed to repair or replace defective Laptops, the repairs and replacements simply result in the consumer obtaining a replacement Laptop or a replacement keyboard on their Laptop, but the replaced or repaired Laptop has the same defectively designed butterfly keyboard. As a result, consumers experience repeated keyboard failures.



67. As is evidenced on Apple's own as well as the MacRumors website, Apple is well-aware that many consumers who have received a repaired or replacement Laptop from Apple experience subsequent or repeated keyboard failure:

Naimfan, posted Nov. 3, 2017

A brief review of threads in Apple support indicates it is relatively common. In my most recent communications with Apple, each person I spoke or chatted with has said keyboard issues are much more frequent than in the past. Only one person, at an Apple store, was willing to put a number on it; he suggested that he sees approximately 1 failure per 5 machines. I have no way of evaluating the veracity of that statement, but from my personal experience that seems low - as noted above, I'm on my third keyboard with this machine, and I'm headed to Apple on Saturday to insist on a replacement.

<https://forums.macrumors.com/threads/2017-macbook-pro-with-touch-bar-keyboard-issue.2083845/>.

Automaticftom, posted Nov. 17, 2017

I had the top case/keyboard replaced on a 2016 15" twice, meaning three different keyboards failed. The 2017 I have seems to be OK so far. It's been suggested that heat is a problem - my 2016 had the 460 GPU, which may have overheated the butterfly mechanism of certain keys and warped them, causing the problem.

<https://discussions.apple.com/thread/8106230>.

project 2501, posted July 1, 2017

Just adding my voice. my 2017 mbpro was a terrible painful experience - keyboard failures amongst others (see my thread).

...

Apple genius himself told me "the repair rooms are full of them" .. them being the 2016/2017 MacBook pros.

<https://forums.macrumors.com/threads/2017-macbook-pro-with-touch-bar-keyboard-issue.2083845/page-4>.

CalebJacobco, posted Apr. 17, 2018

I'm on my second keyboard on my 15-inch 2016 MBP. Both times my keys got stuck they had to send it to Apple and replace the whole top piece where the keyboard is. ... A laptop that is so delicate and sensitive to dust is no good.

<https://forums.macrumors.com/threads/2017-macbook-pro-with-touch-bar-keyboardissue.2083845/page-4>

537635, posted Apr. 22, 2018

After three topcase replacements they put a 2017 topcase & keyboard back in January. Three months later I'm starting to get double keys registered instead of single ones.

Laptop hasn't been moved from my desk in three months, absolutely no food around it, have had a keyboard cover on all the time ....

68. An article published by Stephen Hacket on his blog, [502pixels.com](http://502pixels.com), on October 17, 2017, recounted the author's attempt to fix his Laptop's defective keyboard:

I, like the good kbase follower that I am, consulted and followed Apple's directions for dealing with this:

Hold your Mac notebook at a 75-degree angle, so it's not quite vertical.

Use compressed air to spray the keyboard, or just the affected keys, in a left-to-right motion.

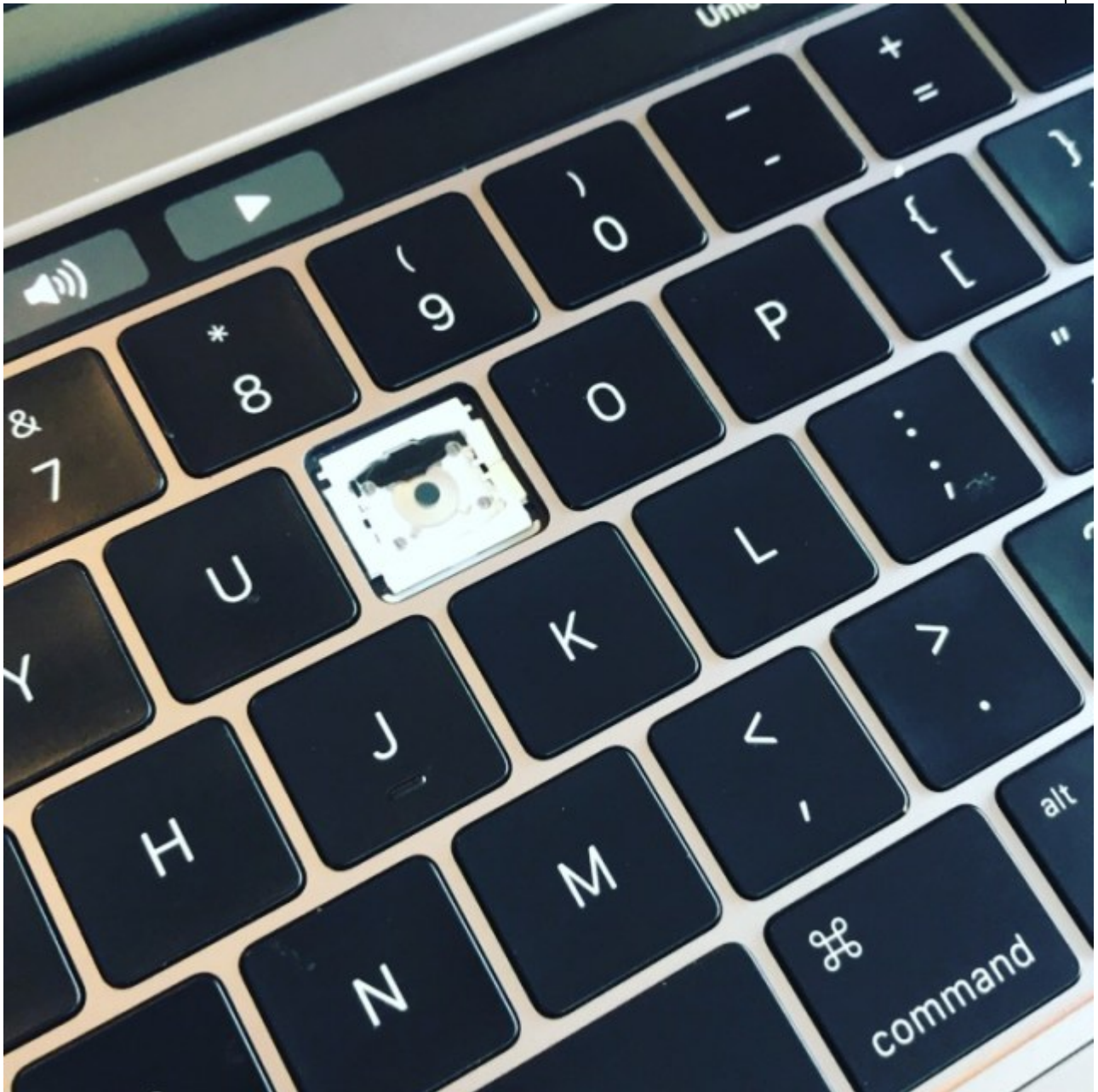
Rotate your Mac notebook to its right side and spray the keyboard again, from left to right.

Repeat the action, this time with your Mac notebook rotated to its left side.

I walked through the process, somehow without dropping my notebook on the concrete floor of my studio. The travel of my i key improved somewhat, but I still had to strike the key with a lot of additional force for my key press to register. I had work to do, so I pressed on, whacking the i key with a bunch of force when I needed to use it.

After a couple days of light usage, the problem got worse.

The bottom lip of the key began to flip up a little bit as the key tried sprinting back up after being depressed. Light was leaking around it, and eventually this happened:



One of the tiny arms that the key cap clips onto is broken. My nearly \$2,000 laptop that I bought less than a year ago is now missing a key, as I shared with our Connected audience this weekend before using an iBook G3 for the rest of the show:



I have a Genius Bar appointment set up for the end of the week. I have the i key ready, tucked away in a small plastic baggie, as if it was a piece of police evidence. I'm not looking forward to it.

<https://512pixels.net/2017/10/theres-no-i-in-keyboard/>.

### CLASS ACTION ALLEGATIONS

69. Plaintiffs bring this lawsuit under Federal Rules of Civil Procedure Rules 23(a), (b)(1), (b)(2), (b)(3), and/or (c)(4) as representatives of the following Class:

All persons in the United States who purchased, other than for resale, a model year 2015 or later Apple MacBook, or a model year 2016 or later MacBook Pro laptop, equipped with a "butterfly" keyboard (the "Laptops").

70. Plaintiffs bring their claims under California's Song-Beverly Consumer Warranty Act and Consumer Legal Remedies Act on behalf of the following Subclass:

All persons in the United States who purchased, other than for resale, one or more of the Laptops for personal, family or household purposes.

71. Excluded from the Class and Subclass are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors,

1 employees, subsidiaries, and affiliates, as well as all judges assigned to this case and any  
2 members of their immediate families or judicial staff.

3 72. Defendant has acted and refused to act on grounds generally applicable to the  
4 Class, thereby making appropriate final injunctive relief with respect to the members of the Class  
5 as a whole.

6 73. Further, this action is brought and may be properly maintained as a class action  
7 pursuant to Rule 23. This action satisfies the requirements of Rule 23, including numerosity,  
8 predominance of common questions, typicality, adequacy, and superiority.

9 74. *Numerosity.* While the exact number of members of the Class and Subclass is  
10 currently unknown and can be ascertained only through appropriate discovery, Plaintiffs, on  
11 information and belief, allege that the Class and Subclass each include at least tens of thousands  
12 of members. Further, members of the Class and Subclass are widely dispersed throughout the  
13 country. Individual joinder of the Class and Subclass members would be impractical.

14 75. *Predominance of Common Questions.* Questions of law and fact common to the  
15 Class members predominate over any questions that may affect only individual Class and  
16 Subclass members, because Apple acted on grounds generally applicable to the Class as a whole.

17 76. Questions of law and fact common to the Class include, but are not limited to:

- 18 a. Whether the Laptops contained a defect at the time of sale;
- 19 b. Whether the Laptops are of the same quality as those generally acceptable  
20 in the market;
- 21 c. Whether the Laptops are fit for the same purpose for which the goods are  
22 sold;
- 23 d. Whether Apple breached express and implied warranties connected with  
24 the Laptops;
- 25 e. Whether Apple represented that the Laptops have characteristics, uses or  
26 benefits that they do not have;
- 27 f. Whether Apple represented that the Laptops are of a particular standard,  
28 quality or grade when they are of another;

- g. Whether Apple knew of the defect, but continued to promote and sell the Laptops without disclosing the problems with the butterfly keyboard and their consequences to consumers;
- h. Whether reasonable consumers would consider the keyboard defect material to their decision whether to purchase a Laptop;
- i. Whether Apple's affirmative representations and omissions regarding the butterfly keyboard were likely to deceive a reasonable consumer;
- j. Whether Apple acted unlawfully, unfairly, and/or fraudulently in violation of California's Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200, et seq.;
- k. Whether Plaintiffs and Class members overpaid for their Laptops as a result of the latent keyboard defect;
- l. Whether Plaintiffs and Class members are entitled to equitable relief, including restitution and injunctive relief; and
- m. Whether Plaintiffs and Class members are entitled to damages or other monetary relief, and if so, in what amount.

77. *Typicality.* Plaintiffs' claims are typical of the claims of all Class members. Plaintiffs, like all Class members, purchased Laptops that contain defective butterfly keyboards and are subject to a common express warranty.

78. Plaintiffs, like all Class members, would not have purchased, or would have paid substantially less for, the Laptops had they known of the defect or the fact that Apple would respond inadequately when the defect manifested.

79. Further, Plaintiffs, like all members of the Class, are subject to Apple's terms and conditions, which provide that California law governs their disputes with Apple. Plaintiffs and the Class's purchases of the Laptops are subject to Apple's Sales & Refund Terms and Conditions, which incorporate by reference Apple's Terms of Use, which in turn provide that disputes between Apple and its customers "will be governed by the laws of the United States and by the laws of the State of California without regard to its conflicts of laws provisions."





1 new and/or previously used parts that are equivalent to new in performance and reliability, or  
 2 (iii) exchange the Apple Product for a refund of your purchase price.”

3 86. Notwithstanding the Limited Warranty, Plaintiffs’ and Class members’ Laptops  
 4 were materially defective at the time of sale. The defect is inherent to the Laptops and renders  
 5 the Laptops substantially likely to fail. As a result, the Laptops are unsuitable for their primary  
 6 purpose.

7 87. Plaintiffs and the Class used their Laptops in a manner consistent with Apple’s  
 8 operating instructions prior to manifestation of the latent defect.

9 88. Apple was on actual notice of the defective nature of the Laptop before selling  
 10 Plaintiffs and Class members their Laptops and received timely notice of the breaches they  
 11 experienced.

12 89. Despite reasonable opportunities to honor the promises in its express warranty,  
 13 Apple failed to furnish an effective remedy to Plaintiffs and the Class.

14 90. Apple’s failure to provide Plaintiffs and Class members with non-defective  
 15 replacement devices, an effective repair, or refunds of the purchase price breached its obligations  
 16 under the warranty.

17 91. As a direct and proximate result of Apple’s breaches of express warranty,  
 18 Plaintiffs and Class members have been damaged in an amount to be proven at trial.

## 19 **SECOND CLAIM FOR RELIEF**

### 20 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**

#### 21 **15 U.S.C. § 2301, ET SEQ. (“MMWA”)**

22 92. Plaintiffs incorporate the above allegations by reference.

23 93. The Laptop is a “consumer product” under the MMWA. 15 U.S.C. § 2301(1).

24 94. Plaintiffs and Class members are “consumers” under the MMWA. 15 U.S.C. §  
 25 2301(3).

26 95. Apple is a “supplier” and “warrantor” under the MMWA. 15 U.S.C. § 2301(4)-  
 27 (5).





1           106. The Laptops were and are used and bought primarily for personal, family, or  
2 household purposes and are therefore consumer goods.

3           107. The Laptops contain a defect that renders them inoperable for typing. The defect  
4 was present when the Laptops left Defendant's exclusive control and therefore existed during  
5 the duration of the warranty period.

6           108. The Laptops were not of the same quality as those generally acceptable in the  
7 trade; were not fit for the ordinary purposes of a Laptop; were not adequately contained,  
8 packaged, and labeled; and did not conform to the promises and facts stated on the container and  
9 label.

10           109. Defendant, therefore, breached the implied warranty of merchantability, which  
11 by law is provided in every consumer agreement for the sale of goods, including for the sale of  
12 the Laptops.

13           110. The defect in the Laptops is latent. Though the Laptops appear operable when  
14 new, the defect existed in the product at the time of sale and throughout the one-year Limited  
15 Warranty period. Accordingly, any subsequent discovery of the defect beyond that time does not  
16 bar an implied warranty claim under the Song-Beverly Act.

17           111. As a direct and proximate cause of Defendant's breach of the implied warranty  
18 of merchantability, Plaintiffs and the Subclass members have been damaged by receiving an  
19 inferior product from that which they were promised.

20           112. Plaintiffs and the Subclass members, therefore, have the right to obtain damages  
21 in an amount to be proven at trial, or in the alternative, to cancel and recover the purchase price  
22 of their Laptops.

23           113. Plaintiffs seek costs and expenses, including reasonable attorneys' fees, under  
24 CAL. CIV. CODE § 1794.

25                                   **FOURTH CLAIM FOR RELIEF**

26                           **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**

27                                   **CAL. BUS.&PROF. CODE § 17200, *ET SEQ.***

28           114. Plaintiffs incorporate the above allegations by reference.

115. Cal. Bus. & Prof. Code § 17200 et seq. (the “UCL”) proscribes “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” CAL. BUS. & PROF. CODE § 17200.

***Unlawful***

116. Apple’s conduct is unlawful, in violation of the UCL, because it violates the California Consumer Legal Remedies Act, the Magnuson-Moss Warranty Act, the Song-Beverly Warranty Act, and constitutes breach of express warranties.

***Deceptive***

117. Apple’s conduct described herein was also deceptive in violation of the UCL.

118. Apple uniformly failed to disclose that the Laptops contained a latent defect and that the butterfly keyboards were prone to failure.

119. Apple knew or reasonably should have known at all times that it sold the Laptops that the Laptops contained a latent defect and that the butterfly keyboards were prone to failure, rendering the Laptops inoperable.

120. Apple advertised the Laptops by representing that they were functional, premium devices, and specifically highlighted the low-profile and purported superior responsiveness and stability of the butterfly switch keyboards. These representations were misleading in light of Apple’s failure to disclose that the Laptops were defective and that the butterfly keyboards were prone to failure.

121. Apple’s misleading representations and omissions regarding the Laptops were material.

122. Apple’s representations and omissions regarding the Laptops were likely to mislead a reasonable consumer.

123. Plaintiffs suffered injury-in-fact, including lost money or property, as a result of Apple’s unlawful and deceptive acts and omissions. Absent Apple’s unlawful and deceptive conduct, Plaintiffs would not have purchased their Laptops, or would not have purchased them at the prices that they did.

124. The Class also overpaid for the Laptops. They would not have paid as much as they did for the Laptops absent Defendant's wrongful conduct.

125. Through its unlawful and deceptive conduct, Apple acquired money from Plaintiffs and the Class directly and as passed on through Apple's authorized resellers.

126. Plaintiffs and the Class seek restitution and such orders or judgments as may be necessary to enjoin Apple from continuing its unfair, unlawful, and fraudulent practices. Plaintiffs also seek reasonable attorneys' fees and costs under applicable law, including under California Code of Civil Procedure § 1021.5.

### **SEVENTH CLAIM FOR RELIEF**

#### **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT**

#### **CAL. CIV. CODE § 1750, ET SEQ. ("CLRA")**

#### **ON BEHALF OF THE SUBCLASS**

127. Plaintiffs incorporate the above allegations by reference.

128. Apple is a "person" within the meaning of CAL. CIV. CODE §§ 1761(c) and 1770, and provided "goods" within the meaning of CAL. CIV. CODE §§ 1761(a) and 1770.

129. As alleged herein, Defendant represented that the Laptops had characteristics, uses, and benefits they do not have; represented that the Laptops are of a standard, quality, or grade that they are not; and advertised the Laptops with the intent not to sell them as advertised in violation of the CLRA, Cal. Civ. Code §§ 1770(a)(5), (7), and (9).

130. Through pre-release testing and its review of consumer complaints, Apple was aware at all relevant times that the Laptops contain a latent defect and that their butterfly keyboards are prone to failure.

131. Apple also made many general, partial representations regarding the Laptops' high quality and premium features, including the butterfly keyboard, that were materially misleading in light of its omission of facts related to the Laptops' latent defect and the butterfly keyboard's propensity to fail.

132. Apple's misrepresentations and omissions were material. Had Plaintiffs and the Subclass members known that the Laptops are defective and their keyboards prone to failure,

1 they would not have purchased their Laptops or would not have purchased them for the prices  
2 that they paid.

3 133. Plaintiffs accordingly seek declaratory and injunctive relief. Plaintiffs further  
4 intend to seek compensatory and punitive damages. Pursuant to CAL. CIV. CODE § 1782(a),  
5 Plaintiffs will serve Defendant with notice of its alleged violations of the CLRA by certified mail  
6 return receipt requested. If, within thirty days after the date of such notification, Defendant fails  
7 to provide appropriate relief for its violations of the CLRA, Plaintiffs will amend this Complaint  
8 to seek monetary damages.

9 134. Notwithstanding any other statements in this Complaint, Plaintiffs, on behalf of  
10 themselves and the Subclass, do not seek monetary damages in conjunction with this CLRA  
11 claim—and will not do so—until this thirty-day period has elapsed.

12 135. Plaintiffs are concurrently filing a declaration, attached as Exhibit A, stating facts  
13 showing that this action has been commenced in a county that is the proper place for the trial of  
14 this action in accordance Cal. Civ. Code § 1780(d).

#### 15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, on behalf of themselves and the Class and Subclass, request  
17 that the Court order the following relief and enter judgment against Defendant as follows:

- 18 A. An order certifying the proposed Nationwide Class and Subclass under Rule 23,  
19 and appointing Plaintiffs to represent the Nationwide Class and Subclass;
- 20 B. A declaration that Defendant has engaged in the illegal conduct alleged;
- 21 C. An order that Defendant be permanently enjoined from its improper conduct;
- 22 D. A judgment awarding Plaintiffs and the Nationwide Class and Subclass  
23 restitution and disgorgement of all compensation obtained by Defendant through  
24 its wrongful conduct;
- 25 E. A judgment awarding Plaintiffs and the Nationwide Class and Subclass  
26 compensatory damages in an amount to be proven at trial;
- 27 F. Prejudgment and post-judgment interest at the maximum allowable rate;
- 28 G. Attorneys' fees and expenses and the costs of this action; and

1 H. All other relief that the Court deems necessary, just, and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs hereby demand a trial by jury on all claims so triable.

4  
5 Dated: May 22, 2018

**SCHUBERT JONCKHEER & KOLBE LLP**

6 */s/Willem F. Jonckheer*

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# EXHIBIT A

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9 *Attorneys for Plaintiffs Individually and on Behalf of*  
10 *All Others Similarly Situated*

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13

14 REMY TURNER, CHRISTOPHER  
15 MARTIN, and JOEY BARUCH,  
16 Individually and on Behalf of All Others  
Similarly Situated,

17 Plaintiffs,

18 v.  
19

20 APPLE INC.,

21 Defendant.  
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28

**Case No.**

**DECLARATION OF WILLEM F.  
JONCKHEER IN SUPPORT OF  
COMPLAINT FOR VIOLATION OF  
CAL. CIV. CODE SECTION 1750 ET  
SEQ.**

**DEMAND FOR JURY TRIAL**



1 I, Willem F. Jonckheer, hereby declare:

2 1. I am one of the attorneys for Plaintiffs in the captioned case. I have personal  
3 knowledge of the matters set forth herein, and could and would testify competently thereto if  
4 called upon to do so. I submit this Declaration in Support of Plaintiffs' Class Action Complaint  
5 against Defendant Apple Inc., which is based in part on violations of the Consumer Legal  
6 Remedies Act, Cal. Civil Code Section 1750 et seq.

7 2. This Court is the proper one for commencement and trial of this action under Cal.  
8 Civ. Code Section 1780(d) because: (a) Defendant Apple Inc. is headquartered in this County  
9 and District, has its principal place of business here, and is subject to jurisdiction here, and (b) a  
10 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this County  
11 and District. Defendant Apple Inc. engaged in the promotion, marketing, distribution and sales  
12 in this County and District of the products at issue in the Class Action Complaint.

13  
14 I declare under penalty of perjury under the laws of the United States that the foregoing  
15 is true and correct.

16 Executed this 22nd day of May 2018 at San Francisco, California.

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Willem F. Jonckheer